

## **FACTS ABOUT: NAMING AND LABELING VARIETIES OF SEED**

Every year many new varieties of agricultural and vegetable seed reach America's marketplace. New seed varieties, when added to varieties already on the market, provide farmers and home gardeners with a wide selection of seed. But, in order for them to buy intelligently, seed must be correctly named and labeled. This is not always done.

Marketing a product by its correct name might seem to be the most likely way to do business. However, U.S. Department of Agriculture (USDA) seed officials have found that seed, unfortunately, is sometimes named, labeled, or advertised improperly as it passes through marketing channels.

Marketing seed under the wrong name is misrepresentation. It can lead to financial loss for several participants in the seed marketing chain.

The farmer, for example, buys seed to achieve specific objectives such as increased yield, competitiveness in a specialized market, or adaptability to growing conditions of a specific region. If seed is misrepresented and the farmer buys seed other than what was planned, the harvest may be less valuable than anticipated, or worse yet, there may not even be a market for the crop.

In one case, a farmer bought seed to grow cabbage to be marketed for processing into sauerkraut. As the cabbage matured, the farmer found that his crop was not suitable for processing and even worse, that he had no market for the cabbage in his fields. In this case improper variety labeling brought about financial hardship.

Seed companies and plant breeders also suffer in a market where problems with variety names exist. For instance, if the name of a newly released variety is misleading or confusing to the potential buyer, the variety may not attract the sales that it might otherwise.

This fact sheet outlines requirements for naming agricultural and vegetable seed. It is based on the Federal Seed Act, a truth-in-labeling law intended to protect farmers and home gardeners who purchase seed. Exceptions to the basic rules and the do's and don'ts of seed variety labeling and advertising also are explained.

### **WHO NAMES NEW VARIETIES?**

The originator or discoverer of a new variety may give that variety a name. If the originator or discoverer can't or chooses not to name a variety, someone else may give that variety a name for marketing purposes. In such a case, the name first used when the seed is introduced into commerce will be the name of the variety.

It is illegal to change a variety name once the name has been legally assigned. In other words, a buyer may not purchase seed labeled as variety "X" and resell it as variety "Y." An exception to this rule occurs when the original name is determined to be illegal. In such an instance, the variety has to be renamed according to the rules mentioned above. Another

exception to this rule applies to a number of varieties which were already being marketed under several names before 1956. (See section on synonyms.)

## WHAT'S IN A NAME?

To fully understand what goes into naming a variety, you need to know the difference between a "kind" of seed and a seed "variety." "Kind" is the term used for the seed of one or more related plants known by a common name such as carrot, radish, wheat, or soybean.

"Variety" is a subdivision of a kind. A variety has different characteristics from another variety of the same kind of seed. For example, "Oxheart" carrot and "Danvers 126" carrot or "Bragg" soybean and "Ransom" soybean.

The rules for naming plants relate to both kinds and varieties of seed:

1. A variety must be given a name that is unique to the kind of seed to which the variety belongs. For instance, there can only be one variety of wheat named "Prairie Road."
2. Varieties of two or more different kinds of seed may have the same name if the kinds are not closely related. For example, there could be a "Prairie Road" wheat and "Prairie Road" oat because wheat and oat are kinds of seed not closely related. On the other hand, it would not be permissible to have an "Alta" tall fescue and "Alta" red fescue because the two kinds of seed are closely related.
3. Once assigned to a variety, the name remains exclusive. Even if "Prairie Road" wheat has not been marketed for many years, a newly developed and different wheat variety can't be given the name "Prairie Road."
4. A company name may be used in a variety name as long as it is part of the original, legally assigned name. Once part of a legal variety name, the company name must be used by everyone including another company that might market the seed.

When a company name is **not** part of the variety name, it should not be used in any way that gives the idea that it **is** part of the variety name. For example, Ajax Seed Company can't label or advertise "Prairie Road" wheat variety as "Ajax Prairie Road" since "Ajax" may be mistaken to be part of the variety name.

The simplest way to avoid confusion is to separate the company and variety names in advertising or labeling.

5. Although USDA discourages it, you may use descriptive terms in variety names as long as such terms are not misleading. "GBR," for instance, is accepted among sorghum growers as meaning "green bug resistant." It would be illegal to include "GBR" as part of a variety name if that variety were not green bug resistant. Similarly, if a sweet corn variety is named "Better Yield Bantam," the name would be illegal if this variety did not produce a higher yield than the standard Bantam sweet corn.

6. A variety name should be clearly different in spelling and in sound. "Alan" cucumber would not be permissible if an "Allen" cucumber were already on the market.

## **HYBRIDS**

Remember that a hybrid also is a variety. Hybrid designations, whether they are names or numbers, also are variety names. Every rule discussed here applies to hybrid seed as well as to nonhybrid seed.

In the case of hybrids, however, the situation is potentially more complex since more than one seed producer or company might use identical parent lines in producing a hybrid variety. One company could then produce a hybrid that was the same as one already introduced by another firm.

When this happens, both firms must use the same name since they are marketing the same variety.

If the people who developed the parent lines have given the hybrid variety a name, that is the legal name. Otherwise, the proper name would be the one given by the company that first introduced the hybrid seed into commerce.

U.S. Department of Agriculture seed regulatory officials believe the following situation occurs far too often:

"State University" releases hybrid corn parent lines A and B.

John Doe Seed Company obtains seed of lines A and B, crosses the two lines, and is the first company to introduce the resulting hybrid into commerce under a variety name. John Doe Seed Company names this hybrid "JD 5259."

La Marque Seeds, Inc., obtains lines A and B, makes the same cross, and names the resulting hybrid variety "SML 25." There has been no change in the A and B lines that would result in a different variety. La Marque ships the hybrid seed, labeled "SML 25," in interstate commerce, and violates the Federal Seed Act because the seed should have been labeled "JD 5259."

## **SYNONYMS-VARIETIES WITH SEVERAL NAMES**

As noted earlier, the name originally assigned to a variety is the name that must be used forever. It can't be changed unless it is illegal.

This does not mean that all varieties must be marketed under a single name. In fact, some old varieties may be marketed legally under more than one name. If several names for a single variety of an agricultural or vegetable seed were in broad general use before July 28, 1956, those names still may be used. For hybrid corn this exception applies to names in use before Oct. 20, 1951.

Here are some examples:

The names "Acorn," "Table Queen," and "Des Moines" have been known for many years to represent a single squash variety. They were in broad general use before July 28, 1956, so seed dealers may continue to use these names interchangeably.

If "Ajax 79EDX" hybrid field corn, released in 1949, also became known as "Golden Ajax 79EDX" in the late 1950's, it would be illegal to label or advertise that variety as "Golden Ajax 79EDX." If the two names had been in use before Oct. 20, 1951, the variety could then be marketed under either name.

With the exception of old varieties with allowable synonym names, all vegetable and agricultural varieties may have ***only one*** legally recognized name, and that name must be used by anyone who represents the variety name in labeling and advertising. This includes interstate seed shipments and seed advertisements sent in the mail or in interstate or foreign commerce.

## **IMPORTED SEED**

Seed imported into the United States can't be renamed if the original name of the seed is in the Roman alphabet.

For example, cabbage seed labeled "Fredrikshavn" and shipped to the United States from Denmark can't be given a different variety name such as "Bold Blue."

Seed increased from imported seed also can't be renamed. If "Fredrikshavn" were increased in the United States the resulting crop still couldn't be named "Bold Blue."

Seed with a name that is not in the Roman alphabet must be given a new name. In such a case, the rules for naming the variety are the same as stated previously.

## **BRAND NAMES**

USDA officials have found evidence of confusion over the use of variety names and brand or trademark names. This includes names registered with the Trademark Division of the U.S. Patent Office.

Here are some rules to keep in mind:

1. The brand or trademark name must be clearly identified as being other than part of the variety name.

For example, "Red Giant Brand Arthur 71 wheat" adequately distinguishes between "Red Giant" brand and the variety "Arthur 71." "Red Giant Arthur 71 wheat," on the other hand, is not an adequate distinction.

2. A brand name must never take the place of a variety name.

Let's say a firm uses "Super Nova" as a brand name for its line of sunflowers. This firm may not relabel or advertise variety "894" hybrid sunflower seed as variety "Super Nova" hybrid sunflower or even "Super Nova 894" variety.

3. If a brand or trademark name is part of a variety's name, that trademark loses status. Anyone marketing the variety under its name is required to use the exact, legal variety name, including brand or trademark.

For instance, say Ajax Seed Company uses "Ajax Deluxe" as a brand or trademark for its line of vegetable seed. If the Ajax people introduce a new tomato variety named "Ajax Deluxe Cherry," they can't retain exclusive rights to that name. If John Doe Seed Company later makes an interstate shipment of seed of this same variety, it must be labeled as "Ajax Deluxe Cherry."

## **MIXTURES OR BLENDS**

The labeling and advertising of a varietal mixture or blend must not create the impression that the seed is a single variety.

The Federal Seed Act allows seed in mixtures or blends to be assigned a brand name but not a variety name. Either the percentages of each varietal component of the blend or the phrase "varieties not stated" must be printed on the label. This rule applies to 36 kinds of agricultural seed.

For example, if a soybean product were a blend of three varieties, the label or advertising could not read "Peninsula Soybean" because "Peninsula" could be mistaken for a variety name. The same soybeans could be sold as "Peninsula Brand Soybean Blend, Varieties Not Stated." Vegetable seed containing more than one variety must be labeled with the name and percentage of each variety present. The "Varieties Not Stated" option can't be used.

## **DO YOUR HOMEWORK**

If you are in a position to name a new variety, you should investigate the name you wish to use. You should not use a name if it has been used before or if a confusingly similar name exists.

Let's say Ajax Seed Company is marketing a new variety of red clover called "Verdant." Another firm released unknown to Ajax, a "Verdant" red clover more than 18 years ago. This original "Verdant" never did become popular and today it has all but disappeared from the marketplace. The fact that it has disappeared doesn't matter. Journals, old catalogs, or other records would prove the existence of the original "Verdant" and therefore Ajax Seed Company must rename its variety.

Researching a name to avoid potential conflict is not foolproof. The Seed Regulatory and

Testing Branch in USDA's Agricultural Marketing Service can assist you in your research. However, there is no official registry of variety names, so the branch's files are incomplete. USDA can't assure you that a name is completely clear.

## **SUMMARY**

If the naming, labeling, and advertising of a seed variety is truthful, it is probably in compliance with the Federal Seed Act.

Keep these simple rules in mind to help eliminate violations and confusion in the marketing of seed:

- ! Research the proposed variety name before adopting it.
- ! Make sure the name cannot be confused with company names, brands, trademarks, or names of other varieties of the same kind of seed.
- ! Never change the variety name, whether marketing seed obtained from another source, or from your own production-for example, hybrid seed that already has a legal name.

## **FOR MORE INFORMATION**

For more information on naming, labeling, and advertising seed, contact the Seed Regulatory and Testing Branch of the Livestock and Seed Program, Agricultural Marketing Service, Marketing and Regulatory Programs, U.S. Department of Agriculture.

Write to: Seed Regulatory and Testing Branch  
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